



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO AMERICAN WOOD FIBERS, INCORPORATED

Registration No. 11599

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 - 1309, and - 1316, between the State Air Pollution Control Board and American Wood Fibers, Inc., regarding American Wood Fibers, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "AWF" means American Wood Fibers, Inc., a company authorized to do business in Virginia and its affiliates, partners and subsidiaries. American Wood Fibers is a "person" within the meaning of Va. Code § 10.1 - 1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 - 1185.
5. "Facility" means the American Wood Fibers facility located at 514 Lee Highway, in Smyth County, Virginia.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 - 1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a NSR Permit to modify and operate a wood-products production facility which was issued under the Air Pollution Control Law and the Regulations to American Wood Fibers, effective May 1, 2012.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
11. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Facts and Conclusions of Law

AWF owns and operates the Facility in Smyth County, Virginia. The Facility is the subject of the Permit which allows the company to operate the wood-products production facility.

1. On February 17, 2011, the Department issued a Warning Letter to AWF. AWF indicated they had been performing load-out of wood/dust shaving material without partial enclosure.
2. On February 28, 2011, AWF submitted a Corrective Action Plan which included the incorporation of an administrative directive into the Facility's Stormwater Pollution Prevention Plan which instructed employees that load-out activities are prohibited outside of partial enclosures. In addition, the Facility read a memo at the next weekly safety meeting to emphasize the prohibition of load-out activities outside of partial enclosure.

3. On August 3, 2012, the Department issued a letter to AWF stating the Department had received information that AWF was storing open piles of wood chips, and requested a response detailing the actions AWF planned to take to address the open storage piles of wood chips.
4. On August 13, 2012, AWF submitted a written response stating AWF did not believe the cedar material in question was particulate matter based on a variant of a sampling method for fine and course aggregate.
5. On September 19, 2012, Department staff discussed by telephone conversation with AWF potential options for storage of cedar materials outside of partial enclosure, this could include sampling and segregation of each cedar pile that came in to determine particle size with procedures approved by DEQ, submittal of a permit application for evaluation to determine if the requirement for partial enclosure could be modified for larger particles (equivalency determination, etc.).
6. On January 29, 2013, Department staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

The inspection was the result of a citizen complaint alleging the unloading, loading and open stockpiling of wood dust material at the 514 Lee Highway site. During this inspection, it was observed that a new pile of fresh wood dust next to the old reject pile was present on the west side of the plant adjacent to parked trailers. Mr. Patterson was unavailable at the time of inspection for questions concerning the material. DEQ staff spoke with Mr. Patterson on February 1, 2013 by telephone, at that time he acknowledged the existence of the pile of fresh wood dust material due to the inability to unload the dust at an alternative site.

7. Condition No. 4 of the Permit states, "Particulate emissions from load-outs shall be controlled by partial enclosure. The control device shall be provided with adequate access for inspection."
8. 9 VAC 5-50-260 requires that, "A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility..."
9. 9 VAC 5-80-1180 requires that, "A. No minor NSR permit will be granted unless it is shown to the satisfaction of the board that the source will comply with the following standards: 1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under

9VAC5-60 (Hazardous Air Pollutant Sources);...3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and 4. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan... ..”

10. 9 VAC 5-170-160(A) - (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: “The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”
11. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
12. On February 19, 2013, based on the evaluation and follow-up information, the Department issued a Notice of Violation No. ASWRO8607 to AWF for the violations described in paragraph C(6) through C(9), above.
13. On February 21, 2013, Department staff met with representatives of AWF to discuss the violations.
14. On March 4, 2013, AWF submitted an electronic response to the NOV. This response noted that AWF did not disagree with the field findings and the interpretation of the regulations used to support the conclusion of noncompliance.
15. On April 15, 2013, AWF responded electronically stating AWF had no comments on the provided draft Order.
16. On June 3, 2013, DEQ received electronic correspondence from AWF requesting a meeting to discuss the NOV.
17. On June 19, 2013, DEQ staff met with AWF representatives to discuss the NOV.
18. On September 25, 2013, DEQ requested a response from AWF regarding the draft Order.

19. On November 14, 2013, the Department issued a letter to AWF, requesting a response from AWF within 10 days of the date of the letter regarding the draft Order and a willingness to negotiate to resolve in a timely manner or DEQ would proceed under other enforcement authorities.
20. On April 4, 2014, DEQ staff met with a representative of AWF and AWF's consultant.
21. On July 22, 2014, based on the evaluation, follow-up information, and meetings with representatives of AWF, the Department issued a Notice of Violation No. ASWRO8983 to AWF for the violations described in paragraph C(6) through C(9), above.
22. On July 23, 2014, DEQ staff met with a representative of AWF and AWF's consultant.
23. On September 3, 2014, DEQ received an electronic response from AWF regarding comments to the draft Order.
24. Based on the results of the January 29, 2013 air compliance inspection, the February 21, 2013 meeting, the March 4, 2013 electronic response, the June 19, 2013 meeting, the April 4, 2014 meeting the July 23, 2014 meeting, and the September 3, 2014 electronic response, the Board concludes that AWF has violated Condition 4 of the Permit, 9 VAC 5-50-260 and 9 VAC 5-80-1180 as described in paragraphs C(7) through C(9), above.
25. In order for AWF to complete its return to compliance, DEQ staff and representatives of AWF have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders AWF and AWF agrees to:

Perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of AWF for good cause shown by AWF, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No. ASWRO8607 dated February 19, 2013 and NOV No.

ASWRO8983 dated July 22, 2014. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, AWF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. AWF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. AWF declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by AWF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. AWF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. AWF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AWF shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

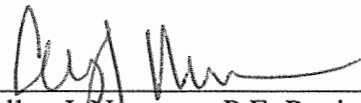
- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and AWF. Nevertheless, AWF agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after AWF has completed all of the requirements of the Order.
 - b. AWF petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to AWF.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve AWF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by AWF and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of AWF certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind AWF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AWF.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, AWF, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this 7th day of October, 2014



Allen J. Newman, P.E. Regional Director
Department of Environmental Quality

American Wood Fibers, Inc. voluntarily agrees to the issuance of this Order.

Date: 7 Oct 2014 By: _____

John Patterson
John Patterson, General Manager – Marion Facility
American Wood Fibers, Inc.

Commonwealth of Virginia

City/County of _____

Smyth

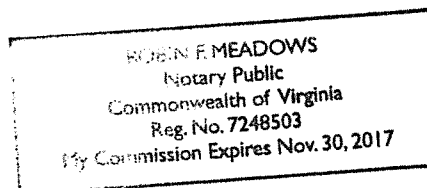
The foregoing document was signed and acknowledged before me this 7th day of
OCTOBER, 2014, by John Patterson who is
General Manager of American Wood Fibers, Inc.,
on behalf of the corporation.

Robin E Meadows
Notary Public

7248503
Registration No.

11/30/2017
My commission expires:

Notary Seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. American Wood Fibers:

- 1) Shall comply with all conditions of their current permit dated May 1, 2012.
- 2) Shall remove the reject pile of material stored at the west side of the facility by November 30, 2014.
- 3) Shall submit a Compliance Plan within 30 days of the execution of this Order. This plan shall include detailed information to confirm management, staff and other associates dealing with load-out activities understand that load-out and storage activities are prohibited outside of partial enclosure.

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, AWF, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. DEQ Contact

Unless otherwise specified in this Order, AWF shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk
Enforcement and Air Compliance/Monitoring Manager
VA DEQ – SWRO
355-A Deadmore Street
Abingdon, VA 24210
(276) 676-4829
(276) 676-4899
crystal.bazyk@deq.virginia.gov